

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

PAUL R. CASTILLO,

Case No. 10cv1838 BTM

Plaintiff.

v.

JOHN SKOBIA et al

ORDER DENYING MOTION FOR RELIEF FROM ORDER LIFTING INJUNCTION ON FORECLOSURE SALE

Defendant:

Plaintiff moves for relief from the Court's Order Lifting Restraint on Foreclosure Sale of his home and seeks reinstatement of this injunction. For the reasons that follow, this motion is **DENIED**.

I. BACKGROUND

The Court granted Plaintiff's motion for a temporary restraining order to enjoin foreclosure sale of his home. [Doc. # 14] In order for this injunction to remain in effect, Plaintiff was required to post monthly security payments of \$2,452.42, representing regular monthly payments he owes on the property. Soon after, the Court denied Plaintiff's motion to have this requirement to post security payments waived. [Doc. # 21] Because Plaintiff failed to post any security payments with the Clerk of the Court in compliance with Court order, the Court vacated the injunction. [Doc. # 37] Plaintiff represents that foreclosure sale is now scheduled for January 11, 2011.

II. DISCUSSION

Plaintiff asserts three reasons why the injunction should be reinstated, not

1 notwithstanding the fact that Plaintiff has failed to post any security payments: (1) Defendants
2 lack standing to foreclose; (2) the Court has not commented on all of the arguments raised
3 in a forensic examiner's report filed as an exhibit to the second motion for a temporary
4 restraining order; and (3) bond is not required because the amount owed is in dispute. None
5 of these reasons are persuasive.

6 A. Standing

7 In granting Plaintiff's motion for a temporary restraining order, the Court held that there
8 was a likelihood that Plaintiff would succeed on the merits of his claim that neither Aurora nor
9 Cal-Western had authority to initiate the foreclosure sale at the time the Notice of Default was
10 entered. Specifically, the Court noted that Defendants Aurora and Cal-Western did not
11 appear to be the trustee, beneficiary, or an authorized agent at that time. Thus, the Court
12 concluded that the Notice of Default appeared to be void *ab initio*, rendering any foreclosure
13 sale based on this notice of default also void.

14 In response, Aurora asserts that it was the authorized agent of the lender at the time
15 the Notice of Default was entered. [Doc. #22 at 5] It declares that “[p]ursuant to the Master
16 Servicing Agreement that Aurora entered into with the lender of the Subject Loan, Aurora is
17 authorized to service the loan, and take all actions necessary to enforce and protect the
18 lender’s rights under the Note and Deed of Trust.” (Zimmerman Decl. ¶ 8) Assuming that
19 this servicing agreement was in effect at the time the Notice of Default was entered, the
20 notice of default would be valid, providing Defendants with standing to foreclose. See Cal.
21 Civ. Code § 2924(a)(1); *Beall v. Quality Loan Serv. Corp.*, No. 10-CV-1900, 2010 U.S. Dist.
22 LEXIS 96846, at *3-5 (S.D. Cal. Sept. 16, 2010).¹

23 Regardless, the Court was aware of the possibility that Defendants would not have
24 standing to foreclose when it denied Plaintiff's motion to waive security payments. As noted
25 in that order, it is likely that Defendants presently have authority to enter a new Notice of

27 ¹ Aurora does not attach a copy of this agreement as an exhibit to its filings. Without
28 a copy of this agreement, the Court is unwilling to definitively conclude that Aurora was an
authorized agent of the mortgagee and thus had authority to enter the Notice of Default at
issue in this case.

1 Default, which triggers statutory requirements that eventually lead to foreclosure sale. The
 2 Court required posting of bond because even if the Notice of Default at issue in this case is
 3 void *ab initio*, Defendants would not be permanently precluded from conducting a foreclosure
 4 sale. Then, as now, the Court rejects Plaintiff's attempt to avoid his independent, contractual
 5 obligation to repay his mortgage loan.

6 **B. Forensic Report**

7 Plaintiff contends that the injunction cannot be lifted until the Court addresses
 8 allegations of violations of state and federal law found in a forensic examiner's report
 9 attached to Plaintiff's second motion for a temporary restraining order. Notwithstanding the
 10 fact that many of these allegations are nowhere to be found in the text of Plaintiff's motion,
 11 such allegations are not responsive to the issue of whether the injunction against foreclosure
 12 sale should be reinstated. The Court lifted the injunction because Plaintiff failed to post bond
 13 in compliance with Court order. Plaintiff can point to no state or federal law that would
 14 bestow upon Plaintiff the right to live rent-free. Regardless of the basis for an injunction, the
 15 Court would require payment of bond for the reasons stated in the Order Denying Plaintiff's
 16 Motion for Waiver of Security Payments.

17 **C. Amount Owed**

18 Plaintiff asserts that he should be excused from payment of bond because "the
 19 amount owed is in dispute." Plaintiff was given a mechanism to challenge the amount of
 20 security payment owed each month. (See Doc. # 14 (stating that the Court would entertain
 21 motions to adjust the security payment if \$2,452.42 does not reflect the current monthly
 22 payments that Plaintiff owes on the property)) Plaintiff chose not to utilize this mechanism,
 23 but instead contended that he should be excused, altogether, from the Fed. R. Civ. P. 65(c)
 24 requirement that he must post a security payment. The Court reiterates that payment of
 25 bond was required for the injunction to remain in effect. Plaintiff asserting that the "amount
 26 owed is in dispute" does not relieve him of this obligation.

27 **III. CONCLUSION**

28 Therefore, Plaintiff's motion for relief from the Court's Order Lifting Restraint on
 Foreclosure Sale is **DENIED**. The injunction enjoining foreclosure sale of Plaintiff's home

1 remains vacated.

2 **IT IS SO ORDERED.**

3 DATED: January 7, 2011

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5 Honorable Barry Ted Moskowitz
6 United States District Judge

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